

9(a)(1)(G) of the ESA with respect to the alleged violation.

[75 FR 30728, June 2, 2010, as amended at 79 FR 20813, Apr. 14, 2014]

§ 223.211 Atlantic sturgeon.

(a) *Prohibitions.* The prohibitions of sections 9(a)(1)(A) through 9(a)(1)(G) of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened Gulf of Maine Distinct Population Segment (Gulf of Maine DPS) of Atlantic sturgeon listed in § 223.102(c)(29).

(b) [Reserved]

[78 FR 69315, Nov. 19, 2013]

§ 223.212 Southern DPS of spotted seal.

The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species shall apply to the Southern Distinct Population Segment of spotted seal listed in § 223.102.

[79 FR 20814, Apr. 14, 2014]

§§ 223.213–223.300 [Reserved]

§ 223.301 Special rules—marine and anadromous fishes.

(a) *Middle Columbia River steelhead* (*Oncorhynchus mykiss*.) (1) The Middle Columbia River steelhead located in the geographic areas identified in paragraph (a)(4) of this section comprise a nonessential, experimental population (NEP).

(2) *Take of this species that is allowed in the NEP area.* (i) Taking of Middle Columbia River (MCR) steelhead that is otherwise prohibited by paragraph (a)(3) of this section and 50 CFR 223.203(a), provided that the taking is unintentional; not due to negligent conduct; and incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Examples of otherwise lawful activities include recreational fishing, recreation, agriculture, forestry, municipal usage, and other similar activities, which are carried out in accordance with Federal, state, and local laws and regulations as well as applicable tribal regulations.

(ii) Handling of MCR steelhead in the NEP area by NMFS, Oregon Department of Fish and Wildlife (ODFW) and the Confederated Tribes of the Warm Springs Reservation of Oregon (CTWS)

employees and authorized agents acting on their behalf for scientific purposes and by the Portland General Electric Company (PGE) and CTWS employees and authorized agents acting on their behalf for the purpose of monitoring and evaluating the ongoing reintroduction under the Federal Energy Regulatory Commission (FERC) license for the Pelton Round Butte Hydroelectric Project (FERC No. 2030).

(iii) Taking of MCR steelhead incidental to any activities related to or associated with the operation and maintenance of Pelton Round Butte Hydroelectric Project's (FERC Project No. 2030) Round Butte Dam by PGE or CTWS as administered under a license issued by FERC. Acceptable forms of taking of steelhead include, but are not limited to, mortality, stranding, injury, impingement at Round Butte Dam facilities, or delay in up- or downstream passage associated with or caused by any of the following activities. Activities related to the operation and maintenance of Round Butte Dam include, but are not limited to:

- (A) Hydroelectric generation;
- (B) Maintenance of project facilities;
- (C) Provision of upstream and downstream fish passage,
- (D) Fish handling at fish separation and counting facilities;
- (E) Fish conservation activities;
- (F) Fish handling, tagging, and sampling in connection with FERC approved studies; and
- (G) Approved resource protection, mitigation, and enhancement measures.

(iv) Handling MCR steelhead by Deschutes Valley Water District employees and agents acting on their behalf for the purpose of monitoring and evaluating the Opal Springs Hydroelectric Project (FERC No. 5891).

(v) Take incidental to any activities related to or associated with the operation and maintenance of the Opal Springs Hydroelectric Project (FERC Project No. 5891) as administered under a license issued by FERC and the Settlement Agreement Concerning License Amendment for Fish Passage, dated October 2011.

(vi) Take of MCR steelhead by any person with a valid permit issued by NMFS and a valid permit issued by the